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A SOCIOLOGICAL VIEW OF SOVEREIGNTY.

CHAPTER IX.

SOVEREIGNTY—RIGHT.

BESIDES reducing coercion to order, sovereignty also squares it with right. In so far as we have considered order alone, we have defined it merely in mechanical terms, as the balancing of force against force; as the extension of rule over wide areas. But social force is the expression of human will. Will is the outcome of beliefs and desires. We must now ask: What part have ideas and beliefs in sovereignty? We shall find that order itself is possible only on condition of a common belief animating separate classes and all classes.

First, the partnership of different social classes in determining the sovereign will is possible only for those classes which have developed the capacity and power of coöperation. Such capacity is based, in the last analysis, on a belief in the moral perfection of the unseen powers that rule the world. Such a conviction alone can sustain that optimism by which hopeful, united action persists. Whether this take the form of belief in a divine ruler, or in the rule of reason and nature, it is the inspiring confidence of the believer that he is working in harmony with a power mightier than all human opposition. It is the perception of a rational aim in the work he is doing, instead of the dictates of caprice, that enlists the will and energy of the worker. The alternative is suicide or slavery. If life were conceived as mere task-work, the mere carrying of bricks back and forth from one point to another, then only hunger or the lash could hold the toiler to his work. A society or a class convinced at heart of such pessimism would perish or be enslaved. For this reason religious revivals have usually preceded, in English history, the political uprisings of new social classes.

On the other hand, the ruling classes themselves must have accepted in general the same beliefs of moral perfection, else

they could not understand the claims of the aspiring class and would be unable to make those concessions implied in partnership. They would submit to sheer coercion in the form of imperialism or tyranny, but would not enter into that arrangement of mutual veto which characterizes the true state with its constitutional form of government.

Belief in moral perfection is the belief in right and wrong. The morally right is that which squares with the perfect rule of the universe. When this belief sinks in the heart, it leads to a certain judgment of self. This is a consciousness conditioned on personal freedom, either of one's own perfection or of one's guilt; of one's harmony or disharmony with the rule of right. In the empiric stage guilt is disobedience to ceremony or custom; in the reflective stage it is the consciousness of a sinful purpose. This consciousness of self is at the same time a judgment of similar perfection or guilt in others conditioned on the recognition of like freedom of choice and action in them. But this of itself does not lead to a recognition of the right of others to be free. There is needed in addition a belief in the moral worth of others; the conviction that they as well as one's self ought to be free to express self-perfection or self-guilt. The Brahman believes in freedom only for the higher caste. The lower are to have little or no choices of their own, but are to serve the higher. The moral worth of others, considered as an effective motive for self, is ultimately a religious conviction of the equality of others. This is the narrower meaning of the "general will" which Green really has in mind in his contention, referred to in chap. 7, that will, not force, is the basis of sovereignty. The general will, he says, is "not the momentary spring of any and every spontaneous action, but a constant principle, operating in all men qualified for any form of society, however frequently overborne by passing impulses, in virtue of which each seeks to give reality to the conception of a well-being which he necessarily regards as common to himself with others."¹ "The state or sovereign presupposes rights, and is an institution for their

¹ *Lectures on the Principles of Political Obligation*, p. 217.

maintenance.”¹ “It is the interest of men in a common good, the desire on the part of each, which he thinks of others as sharing, for a good which he conceives to be equally good for them, that transforms mere ‘potentia’ into what may fitly be called *jus*, *i. e.*, a power claiming recognition as exercised or capable of being exercised for the common good.”²

There is an ambiguity in the word “right,” of which the foregoing quotations from Green give evidence. There are three uses of the term, which may be designated, respectively, moral right, popular right, and legal right. That which has been described above as flowing from the belief in moral perfection is moral right. It is right in the “adjective” sense, and is contrasted with wrong. Popular right and legal right, however, have nothing directly to do with right and wrong. They are the “substantive” uses of the term, and denote a social relation based on coercion. Holland defines a right as “one man’s capacity of influencing the acts of another, by means, not of his own strength, but of the opinion or the force of society.” He designates these respectively as “moral” right and “legal” right, but the term “moral” right is here ill-chosen. “Popular right” is preferable. The distinctions between these three uses of the term will appear clearly if we ask for the standard by which “moral” right is to be measured. When we ask, Is a given deed or social relation right, or is it wrong? we do not have reference to the standard set up by law or by public opinion. A legal right and a popular right may both be wrong. These are social relations, and may or may not be right. Neither do we refer to the social and legal rights of “normal” as distinguished from “pathological” societies, a criterion proposed by Durkheim.³ Individuals will differ in their opinions as to what is normal and what is pathological. Again, the standard cannot be “universal reason,” for universal reason, so far as known, revealed, and workable, is only the reason of individual human beings, and these will differ. The standard of moral right must be subjective and

¹ GREEN, p. 143.

² *Ibid.*, p. 54.

³ *De la division du travail social*, p. 34.

not objective. But it cannot be the individual opinion of any and all persons, for then the standard set up by criminals, cranks, and degenerates would be of equal value with that set up by others, a position practically held by the sophists. The true criterion of right and wrong must, therefore, be the personal belief of each normal person who makes a conscientious effort to know the right. This effort consists partly in seeking social confirmation. "In order to know the law of God you must interrogate not only your *own* conscience, but also the conscience and consent of humanity."¹ It also consists partly in criticising and improving upon the existing standards of humanity. In this way do the beliefs regarding right change with every individual and every race and generation. But they are purely subjective and personal, and can be changed, not by arguing or by legislation, but by conversion. The heart, the subconscious self, the moral character, the religious faith, the passions and desires, are their foundation, and only as these change do men's beliefs of right change.

Beliefs in right, as they spread through society by propaganda and conversion, lead to action. This action is the united action of those believing alike. Its social consequences are the new coercive relations which it imposes upon those who do not accept the belief. These are "popular rights." Subjective right here becomes objective. "Adjective" right becomes "substantive." It becomes a social relation. Austin says that "a so-called law set by general opinion" is "not a law in the proper signification of the term," but that it is closely analogous to a law proper, and differs only in the fact that the law in the one case is established and obedience is exacted by an uncertain and indeterminate body of persons, and in the other case by a certain and determinate body.² These analogous and indeterminate "laws" are the basis of popular rights. As soon, however, as popular rights begin to find expression through the determinate, constituted authorities of the state, whether judges, legislators, executives, constitutional conventions, or referenda,

¹ MAZZINI, *The Duties of Man*.

² AUSTIN, *Lectures on Jurisprudence*, Lecture V.

they become "legal rights." Here the coercive element has been definitely extracted from the inchoate mingling of coercion and persuasion characteristic of popular rights, and has been given a clear and definite statement, on which the people can depend. The state thereby further emerges and differentiates from the other institutions of society, and the added powers in the hands of its certain and determinate agents constitute positive law and legal rights.

The confusion in meaning of moral right, on the one hand, and popular and legal right, on the other, is based on the deep conviction or feeling that legal rights should be backed by moral right. This conviction is expressed in the terms "divine rights" and "natural rights." Properly speaking, these terms do not apply to substantive rights. They do not indicate primarily a social relation, but an opinion as to what *would* be a *right* social relation, *i. e.*, a *right right*. They belong to moral right and not to substantive rights. They are simply a dogmatic way of asserting that one's own opinion of what ought to be a legal right is above question. It is to be noted that these terms do not appear until society has entered the reflective stage. In the empiric stage social relations are determined by religion and custom. These are above inquiry and criticism. They are not thought of as either right or wrong, but as commanded by the gods. But in the reflective stage, with its tyrants, tribunes, and absolute monarchs, whose personal wills emerge as sanctioning or even overruling custom, and whose commands become laws in the Austinian sense, then appeal must be made to the consciences of those who are called upon to obey. This was done first under the claim of the "divine right" of kings, then the "natural right" of kings, and finally, with the rise of transferable property, the doctrine of natural right was appropriated by the capitalist class in their demand for equal privileges with king and lords. Throughout all these controversies the terms "divine" and "natural" right signified merely that those who laid claim to the coercive power of the newly emerging state in the assertion of legal rights were morally justified in the action they took. It was their only way of appealing to the powerful

convictions of moral and social perfection lying deep in the subconscious minds of all.¹

I have said above that moral right exists only in the mind. It is subjective. But so dependent is the mind on its social condition that the belief in moral right can arise only as the individual feels himself to be free. Freedom is ability to choose and act as one wishes. There is neither right nor wrong where necessity rules — only success or failure. Free will is illusory if it does not end in free action, and free action is impossible where society has not yet overcome the high physical facts of necessity. There are three kinds of necessity. First, climatic, that which is above and beyond the control of man. The seasons, the winds, the zones, the ocean currents, the isothermal areas, establish conditions of necessity which man has but meagerly overcome, and in contest with which his freedom is only an illusory and empty option between life and death. Second, material necessity; that which man gradually overcomes through science, invention, and art. The material products which men consume and use and enjoy are but the raw material of nature worked over by human thought and labor. They are simply the products and services of others. Material freedom is the control over a wide range of these products. The savage is not free, because he has but few social products to choose from. The civilized man is free because he can choose all the way from Bibles, paintings, schools, homes, to whisky, roulette, and prostitutes. In doing so, as we have seen, he simply commands and controls the services of others. This the economists call wealth. It is material freedom. The savage is first a slave to nature, and is freed from nature by enslaving his fellow-men. Slavery is originally neither right nor wrong — it is necessary. Third, competitive necessity; that which marks the struggle for life and is overcome by organization, monopoly, and government. When the British soldiers were imprisoned in the Black Hole with only a six-inch window for air, their susceptibilities to love, justice, mutual help, which stimulated their marches and

¹ See also FIGGIS, *The Theory of the Divine Right of Kings* (Cambridge University Press, 1896).

battles, were utterly crushed in the death of the weaker and the survival of the stronger. When a thousand workmen compete for five hundred jobs, it is to the credit of human nature and the police if they do not cut each other's throats. When capitalists bankrupt their rivals, it is only the recluse, the agitator, the prophet, who whispers or shouts "injustice." The man in the struggle sees only necessity. It is vain to speak of freedom or of right and wrong, where the choice is limited to life and death, to success and failure. The first obligation in war is victory, and that is the reason why "war is hell." But when victory is won, when competition ends in monopoly, when organization and subordination take the place of struggle, then the victor is free; then he can listen to the still small voice of right.

It is the growth of monopoly and centralization in each social institution which has in the end subordinated necessity to freedom, and has paved the way not only for higher convictions of moral right, but also for the incorporation of these convictions in the form of legal rights. The freedom which thus emerges within each institution is "institutional freedom," corresponding to the factor of organization, just as material freedom corresponds to the material basis of each institution. Institutional freedom is private property; and the ethical phase of property is the judgment of the right or wrong concerning choices which proprietors are free to make. This is personal ethics, which has a twofold character. It may refer to the effect of the free choices on the character and destiny of self, or on the character and welfare of others. But in either case the ethical judgment is unwarranted unless the person is secure in that control over the wide range of services of others which we understand by property. Now, competition is not property, but struggle for property. Its criterion is not the right nor the wrong, but the successful. Property is a requisite for survival, but it is not mere ownership. It is also the organization, subordination, discipline, efficiency, of the human agents combined under the management of the proprietor. And until monopoly is reached this organization is never so secure that it can dispense with the equipment for fight. There is always another organization, as

well or a little better disciplined, ready to overwhelm it and capture its territory and subsistence. If this be true, then it is only in the lulls of competition or in the completed and victorious monopoly that the ethical appeal can be made. This is doubly true of that customary period which culminated in absolutism, where survival of the fittest necessitated the survival of the strongest and largest organization. It is also true in the reflective period, where, although doctrines of moral right were enlisted in the strife for participation in sovereignty, yet these doctrines lodged in the mass of the people rather as a stimulus to strife than a devotion to right. But when struggle ended in centralization, when strife ended in sovereign partnership, then the claims of ethics could be heard and obeyed. The psychic basis of this fact is the same as that which we have found in private property, namely, that coercion is the means for executing the mere wish or opinion of the proprietor. It compels obedience, and therefore need not rely upon knowledge, skill, or tact. The character of the commands imposed are simply the outward expression of the moral character of him who commands. The same is true of the state's commands. They express the moral character of those who participate in sovereignty. But this partnership must first be compulsorily acquired and guaranteed in the very constitution of the state. In this process all other qualities are mere instruments of might. Force can be met only with force. But when acquired, then the moral character of the sovereign can show itself, whether he be a mere sensualist and demander of pleasure, or a conscientious dispenser of justice and right in the use of his coercive power. It is the beliefs of the sovereign concerning right which shape his sovereign will. The ethical appeal to him is in effect an appeal to use his property in such a way as to promote the highest good of self and of others, *i. e.*, to command the services of others rightly instead of wrongly.

But, unfortunately, the human will unchecked is capricious, self-seeking, oppressive. During the period of competition it is checked by its own weakness. In the period of absolutism only the personal character of the chance ruler determines the ethical

character of the entire institution. What is true of the state is true of the other social institutions, whether governmental or subordinate; each one becomes an organization with a will of its own, enforced through the subordination of its members. The capacity of the human will, its range of free choice, is deepened and widened when competition has disappeared in monopoly. It becomes an institutional will, which is the will of the headman of the institution.

The problem of the reflective organization of society, following the breakdown of custom and the disappearance of competition, is how to check the capricious use of power by this headman in each institution, and to induce him continually to exalt justice above caprice. This is the problem of order and right.

We thus have the three constituents of sovereignty—coercion, order, right. Coercion originates as private property. The struggle for existence causes this to survive in the form of monopoly and centralization. Order emerges as a constituent of sovereignty in place of caprice only when sovereignty has extended over wide areas and when subordinate classes have earned the veto power in determining the sovereign will. Right takes its place as the moral aim of sovereignty when freedom has displaced material and competitive necessity; when the struggle for property has ended in the monopoly of property. We are now to examine in detail the subordinate or persuasive institutions of society with respect to the growth of organization, the extraction of coercion, and the injection of right.

JOHN R. COMMONS.

SYRACUSE UNIVERSITY.

[*To be continued.*]